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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
The Petition of America's Carriers)
Telecommunication Association for)
Declaratory Ruling, Special Relief,)
and Institution of Rulemaking)

RM-8775

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OPPOSITION

THE VON COALITION

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May 8, 1996

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Summary

The VON Coalition urges the Commission not to regulate the Internet or ban VON products. The unfettered growth and development of the Internet and VON are in the public interest. Both the Internet and VON are used to facilitate communications among millions of people in innovative and often very efficient and cost-effective ways that open entirely new opportunities for personal and business communications, education, health care, and entertainment. The Commission should encourage and not stifle this innovation.

In its most basic form, VON is no different from other forms of data communication using the Internet or other communications networks. As such, its development and use is inseparable from the development and use of other multimedia software and applications.

There is no apparent reason for government regulation that might upset the dynamic nature of the development of the Internet, including VON. ACTA has failed completely to show that the Internet or VON have produced any harm to the public interest or even to the narrow self-interest of ACTA's members. We are unaware of any present commercial use of VON software to connect to standard telephones that are part of the public switched telephone network. But, even if there were such uses, the logical government response should be to welcome and encourage the development of new services that add to competition and consumer choice.

ACTA's legal argument that the Commission must regulate the Internet and VON because VON software developers are "Telecommunications Carriers" flies in the face of the plain language of the Communications Act, years of Commission rulings, and common sense. The companies that ACTA attacks in its Petition offer software that customers install on their computers and use over various computer networks, including in many cases proprietary networks. ACTA argument that the offering of this software turns these companies into "carriers" is completely unreasonable and should be rejected by the Commission.

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OPPOSITION OF THE VON COALITION

The Voice-On-the-Net ("VON") Coalition hereby submits its comments on the above-referenced petition of America's Carriers Telecommunication Association ("ACTA"). The VON Coalition represents companies and individuals that develop, market, and use software that permits two-way voice communications over computer networks such as the Internet. As such, the VON Coalition is fundamentally opposed to ACTA's proposal that the Commission prohibit the sale or use of such software. As discussed below, an unregulated Internet, including VON, is in the public interest, providing new and useful services in a competitive market. National telecommunications policy, as reflected in the recent Telecommunications Act and the Commission's past policies, requires the Commission to foster this innovation and competition. In this case, the Commission can best accomplish these goals by forbearing from asserting jurisdiction over the Internet or regulating the sale and use of VON products.

Background

The VON Coalition. The VON Coalition (<http://www.von.org>) was formed as a direct result of ACTA's attempt to get the Commission to regulate computer software and Internet services. Since its formation in early March, over four hundred individuals and 81 corporations have joined. The corporate membership includes many of the software companies that are

developing and marketing VON products. These include: FreeTel Communications, Inc. ([Http://www.freetel.com](http://www.freetel.com)); Netspeak Corporation (<http://www.netspeak.com>); VDONet Corporation (<http://www.vdolive.com>); VocalTec, Inc. (<http://www.vocaltec.com>); Voxware Inc. (<http://www.voxware.com>); White Pine Software, Inc. (<http://www.wpine.com>); and Xing Technology Inc. (<http://www.xingtech.com>). Information about these companies and their VON products is attached as Exhibit A.

The initial force in organizing the coalition was Jeff Pulver, a computer professional, long-time amateur radio enthusiast, and Internet activist who was an early experimenter with VON products. Among Jeff's projects is Free World Dial-up ("FWD"), a non-commercial experiment in using VON in ways that amateur radio has been used. A description of FWD is attached as Exhibit B. Other members of the coalition include many professionals who use VON products in their work. For instance, Dr. Takeshi Utsumi is a well-known innovator in the use of computer networks for distance learning.

The VON Coalition's goal is to educate the public and government officials regarding the use of voice and video on communications networks. The VON Coalition seeks to preserve the Internet as a place for emerging technologies and business. A copy of the Coalition's initial press release is attached as Exhibit C.

Voice on the Net. In its most basic form, VON is not much different from other forms of data communication using the Internet.^{1/} VON uses the same basic transport lines, routers, and

^{1/} VON was first introduced in the early 1990's with the advent of the VAT20 program on the MBONE. Cornell University introduced CU-SeeMe for the Macintosh platform in 1993, which provided two-way videoconferencing capability. With CU-SeeMe and projects like Netphone from the Electric Magic Company in 1994, people began using the Internet for the first time to transmit voice and video .

servers as are used, for instance, for Internet e-mail. From the user's perspective, VON requires the same equipment and configuration as other Internet communications, with a few additional items. Altogether, the user needs a computer with certain minimum capability (in the case of a PC, at least a 486), a modem with at least 14.4 kbps transmission capability, a sound card, speakers or a headset, a microphone, and special software that processes the sound of the user's voice into small digital packets that are sent through the Internet. Data packets from a computer user at another point on the Internet are similarly processed into a sound that is transmitted through the computer's speakers. Some VON products are limited to half duplex operation, others permit full duplex conversations. Some operate through an Internet Relay Chat server, others are designed to contact a user's Internet Protocol address directly.

The compression algorithms typically used for VON make it quite efficient. An Internet user typically uses sophisticated signal processing algorithms to first compress his speech, then send this compressed signal over the Internet. The compression algorithms used vary, and are constantly being improved. They typically compress speech to between 2.4 and 14.4 kbps, and only transmit when the user is actively speaking, which is less than half of the duration of the call. This compares with 64 kbps for a telephone conversation using the PSTN dial-up network.

The economics of VON involve not only an investment in the necessary computer hardware and software, but also the cost of accessing the Internet. This cost varies widely, depending on the user. Some users have Internet accounts that provide them with a flat monthly rate for unlimited access at a particular bandwidth or data rate (e.g., 28.8 kbps or 1.5 mbps), others pay a flat rate for several hours of access at a particular bandwidth or data rate and a per-minute price for additional access. The Internet is not designed with sophisticated accounting

and billing mechanisms. Users are never billed based on any distinction between “local” and “long distance” packets.

There is nothing about VON products that limits their use to the Internet. The same equipment and software can be used to provide voice communications over other properly equipped networks, such as corporate and institutional computer Local Area Networks. There has been a tremendous increase in the use of these and other internal networks in the recent past and that trend is expected to continue with the growth of what are referred to as “intranets.” VON is expected to play an important role in the growth of these networks.

The VON Coalition estimates that there are currently at least 18 companies offering their versions of VON software. This software has been acquired by over a million computer users and Netscape Corporation recently released a beta version of its browser software that contains VON capability. Most of the current use is by hobbyists who are experimenting with the technology. As the software becomes more widely distributed and there is a greater critical mass of potential users, the VON Coalition expects its use to increase substantially.

The likely uses of VON include a number of personal, business and educational applications. In general, VON can be expected to be widely used whenever there is communication among people with computers. Thus, for instance, companies that operate World Wide Web sites to promote their products and services may make available “live” operators to answer questions from customers who are visiting their website.

The distance learning applications of voice and video on the Internet are particularly exciting. Anyone who has witnessed the use of CU-SeeMe technology over the Internet can immediately grasp the educational potential for multimedia applications as a way to

inexpensively expand the classrooms of our finest teachers. Early informal comments filed by Educom, an organization that represents the information technology interests of over 600 colleges and universities, eloquently describe the developing role of the Internet and VON products in education:

Institutions of higher education have been deeply involved with computer networking technology since its inception some twenty-five years ago. Our participation has included fundamental research, applied development, and pre-commercial deployment of products and services. In the course of these activities, campuses have partnered with federal research agencies and with private industry on many occasions to achieve common networking objectives.

Today, higher education is a major user of the worldwide facilities of the Internet, which have become an essential component of our teaching, research and public service missions. In the United States, fifteen million students and several million faculty and staff at more than three thousand accredited institutions are served by 1.9 million Internet host computers, a number which has doubled in the last year and is still growing rapidly.

The Internet is not only important today, but its successful continuing growth is an integral part of the strategic planning efforts within higher education to enable greater access by students throughout the nation, to reach out to the primary and secondary school community, and to forge new ties with employers of our graduates.

The availability of fully digital, multimedia Internet services has enormous future value to the realization of many teaching and learning goals, especially in connection with distance education. Many of the well known shortcomings of "talking head" forms of projecting classrooms to off campus sites based on switched or off the air analog television will be ameliorated by a fully interactive, multimedia, wireline and wireless Internet. In addition to its "anyone, anywhere" capability, the future multimedia Internet will facilitate the transition of instruction from "teacher-centered" to "learner-centered" forms of instruction.

Additionally, the flexible provision of multimedia capability will allow the development of new learning tools and systems that support the needs of individuals with learning impairments such as blindness, deafness, limited muscular control, dyslexia, etc.

Comments of Educom (April 3, 1996).

VON software in its current form has certain limitations. Beyond the obvious limitations that use requires a relatively expensive computer and a minimal amount of technical competence, there are also often problems with the quality of the communications, due to the nature of the Internet as it is presently structured and operated. This can mean that calls do not always go through, sound quality can be poor, or there can be annoying delays within a conversation. There is no independent power supply. Thus, if the called party's computer is not operating or no one is nearby, the call may go unanswered. Another limitation is that there is at present no single standard for compressing audio into data packets. As a result, in many cases users of one software product cannot communicate with users of other products.

Solving these problems, to make VON less costly, more convenient, and of better quality is a matter of ongoing effort that the coalition expects will be successful, but it is impossible at this time to predict how much time and money will be required to produce results. For instance, there are new routing protocols, such as one recently introduced by Cisco Systems called "RSVP" which should help to reduce the latency between packets. In addition, the Internet Engineering Task Force is working to develop a voice standard protocol and many of the leading companies have endorsed that process, but such an effort may take substantial time to complete.

Some of the great deal of publicity in the general press about VON software gives the impression that it is being used to provide a commercial service that connects the user to the PSTN to terminate communications at a standard telephone. Our understanding, is that any such description at least at the present time is inaccurate. As described above and in Exhibit B, the Free World Dial-up project was strictly a non-commercial venture by a volunteer group of hobbyists interested in promoting technological innovation and communications, in the spirit of

amateur radio.^{2/} In the future commercial applications may develop that involve terminating communications at standard telephones but, as discussed below, such a development should not be relevant to the Commission's decision regarding either the regulation of the Internet or the regulation of VON software.

VON software is used for more than just two-way point-to-point communications. Many radio stations are beginning to use the Internet to transmit programming. The MBONE, an experimental portion of the Internet that was critical in the development of VON, is being used to experiment with audio- and video-conferencing, the broadcast of concerts, and other "non-traditional" uses of computer networks. A further description of the MBONE is attached as Exhibit D.

All of the bits that are transmitted through the Internet, whether voice conversations, e-mail, pictures of comets, or Rolling Stones concerts, appear the same and are handled the same by the hardware and software that comprise the Internet. It may be theoretically possible for Internet service providers to try to identify customers using VON products, but it is practically impossible to do so. The only possible way to distinguish VON from other packets is by the particular port that is typically selected by the software provider for that product and encoded into the software. As a practical matter, if entities attempted to block packets from those ports, it would be relatively easy for users to simply change the designated port. Moreover, attempting to block the use of particular ports might inadvertently block other software and applications that

^{2/} The FCC's rules permit "autopatches" by amateur radio operators between their facilities and the public telephone network, as long as those operations are non-commercial. *See* § 97.113; Amendment of Part 97 of the Commission's Rules to Relax Restrictions on the Scope of Permissible Communications in the Amateur Service, PR Docket No. 92-136, 8 FCC Rcd 5072, 1993 FCC LEXIS 3852, 73 RR 2d 679 (1993).

happen to designate the same port.

The ACTA Petition. ACTA, which describes itself as a trade association of interexchange telecommunications companies, filed its Petition on March 4, 1996. ACTA contends that the providers of VON software are “telecommunications carriers” under the new Telecommunications Act and, as such, should be subject to FCC regulation like all telecommunications carriers. ACTA also asks the Commission to order certain software companies that it names as respondents to immediately stop “arranging for, implementing, and marketing non-tariffed, uncertified telecommunications services” that, according to ACTA, do not comply with the Communications Act, §§ 203 and 214.^{3/}

ACTA contends that providers of VON software, because they are not subject to the same statutory and regulatory requirements as ACTA's carrier members, “distort the economic and public interest environment in which ACTA carrier members and nonmembers must operate.” According to ACTA, unless the Commission takes the requested action, the “continued viability” of ACTA's members and their ability to “acquit their public interest obligations” under federal and state laws is threatened.

ACTA also contends that the FCC should exercise broad authority to regulate the Internet. ACTA asks the Commission to issue a declaratory ruling establishing its authority over interstate and international telecommunications services using the Internet and begin a rulemaking to govern the use of the Internet for providing telecommunications services. ACTA expresses its concern that without action by the Commission, “the new technology could be used

^{3/} Section 203 of the Act establishes the requirement that common carriers file tariffs. Section 214 requires carriers to obtain approval from the Commission for extensions of lines.

to circumvent restrictions traditionally found in tariffs concerning unlawful uses, such as gambling, obscenity, prostitution, drug traffic, and other illegal acts.”

ACTA seems to claim that its petition is intended to help the development of the Internet, stating that “the misuse of the Internet as a way to bypass the traditional means of obtaining long distance service could result in a significant reduction of the Internet's ability to handle the customary types of Internet traffic.” ACTA therefore submits that it would be in the public interest for the Commission to “define the type of permissible communications which may be effected over the Internet.”

Discussion

As discussed below, the evidence is overwhelming that the Commission should not regulate the Internet or ban VON products.^{4/} The unfettered growth and development of the Internet and VON are in the public interest, providing important new services in a way that is economical and efficient. There is no apparent reason for government regulation that might upset the dynamic nature of their development. ACTA certainly has failed to show that the Internet or VON have produced any harm to the public interest or even to the interests of ACTA's members, let alone the kind of harm that can or should be cured by government

^{4/} In these comments, the VON Coalition does not address ACTA's assertion that the Commission could legally assert jurisdiction over the Internet, although such an assertion is clearly questionable (particularly with respect to Internet software) and the coalition reserves the right to discuss this issue at greater length in the future. The more relevant questions from the VON Coalition's perspective are whether the Commission, even if it has jurisdiction, must or should exercise its authority to regulate either the Internet or VON. The answers to those questions quite clearly are that the FCC has discretion **not** to regulate the Internet and VON products and that, consistent with the Communications Act and Commission policies, it should exercise that discretion by forbearing from regulating either one.

regulation. To the extent that the Internet provides competition to the public switched telephone network, that competition should be encouraged, not stifled.

ACTA's legal arguments are similarly misguided. Its claim that VON software providers are "Telecommunications Carriers" flies in the face of the plain language of the Communications Act, years of Commission rulings, and common sense. VON software providers develop and market software that customers install on their computers and use over various computer networks, including in many cases proprietary networks. To argue, as ACTA does, that the offering of this software turns these companies into "carriers" is, frankly, absurd.

I. The Continued Unfettered Development of the Internet and VON is in the Public Interest

An objective look at the Internet and VON demonstrates beyond any doubt that they have many significant benefits and do not cause any apparent harm. Both the Internet and VON can be used to facilitate communications among millions of people in innovative ways that open entirely new opportunities for personal and business communications, entertainment, education, health care, and other uses.

Chairman Hundt described the importance of networking classrooms with computer resources in a speech that he made over a year ago:

I have seen networked classrooms, and they work. I saw this future in the Ralph Bunche Elementary school -- P.S.125 -- in Harlem, New York. Two classrooms the are connected to the phone network. I watched fifth and sixth graders share a lesson with kids in Nova Scotia and Hawaii. They use the CIA World Fact Book to conduct science projects. They electronically questioned researchers in Australia.

Networks carry those kids to their classrooms, beyond the walls of P.S. 125, outside of Harlem, and around the globe. Networks show them the way to a brighter future. Networks bring them education resources that no school district could otherwise physically import.

... I'm talking about real learning. Social scientists have repeatedly proved that education over networks captures students' imaginations and calls forth a greater willingness to learn. Test scores go up when learning occurs over networks. Self esteem rises. Fluency in self expression increases.

... [i]f we get every school and classroom networked, it won't matter whether the school is in a rich or a poor state. All information will be equally accessible to every child. Communications technology may not be a panacea for all the challenges of education. But it can be the great equalizer of opportunity.

Prepared Remarks at a meeting of Kidsnet (August 22, 1995).

One of the most important things about VON is what it represents as a product of the experimentation that characterizes the Internet. That experimentation makes the Internet a dynamic testing ground for the kinds of innovative computer and communications concepts that bring tremendous benefit to society, in terms of both new services and more efficient versions of existing services. The fact that much of this innovation is taking place in the United States is a testament both to the United States' preeminence in these fields and to recognition of the importance of encouraging innovation if the United States is to maintain that leadership role.

As discussed above, it also appears unlikely that any attempt to ban VON would be practically enforceable. The packets that are transmitted are indistinguishable from e-mail or other packets and the software has many applications that go well beyond its use on the Internet, so the Commission could not justify a wholesale ban on the sale of the software. Moreover, much of the software is distributed without charge.

ACTA alleges that VON is harmful, but it fails completely to make a showing that this is the case. ACTA makes no showing that VON is used for illegal activities or, more to the point, that existing criminal laws would be inadequate to deal with such activities. ACTA also fails to make any showing to support its argument that the use of VON will harm the Internet itself. The

evidence, moreover, is to the contrary, that the increased utility of the Internet provided by VON and other innovations will lead to an increase in the facilities committed to support the network, thus relieving any congestion. The Internet Network Engineering Task Force is also engaged in discussions to develop ways of prioritizing packets to reduce congestion for applications that require faster transmission.

Even ACTA's blatantly protectionist claim of harm to its own members, which presumably is the heart of its petition and the area in which ACTA is best able to supply evidence, is totally conclusory. ACTA does not present a shred of evidence that any of its members has lost one customer or one minute of traffic due to the existence of VON. In this regard, it is interesting to note the rejection of ACTA's position by the largest interexchange carriers.^{5/} ACTA's claim that its members suffer from being unfairly subjected to regulatory requirements is also unsubstantiated. For the most part, as discussed below, the Commission's policies, codified by the passage of the Telecommunications Act, have been to deregulate non-dominant carriers such as ACTA's members. As a result, these entities are not generally subject to burdensome regulation.^{6/}

^{5/} See, e.g., AT&T's recent announcement that AT&T WorldNet will help develop and market VON products. Interactive Week Online (May 1, 1996). AT&T WorldNet Vice President Tom Evslin said AT&T is opposed to the ACTA petition. Id.

^{6/} See, e.g., Notice of Proposed Rulemaking in CC Docket No. 96-61, FCC 96-123 (proposing to apply mandatory forbearance to all interstate long-distance carriers). The obligation to support universal service, which ACTA alludes to, is the subject of a Commission rulemaking proceeding that seeks to reform the current structure of support. CC Docket No. 96-45. See, e.g., Comments of Netscape (April 12, 1996) (the Communications Act does not permit the Commission to impose universal service support obligations on Internet service providers, since as "information service providers" they are not subject to an obligation imposed only on "telecommunications carriers"). The VON Coalition urges the Commission to limit consideration of universal service

(continued...)

As discussed above, at present there is no commercial use of VON to connect to standard telephones that are part of the public switched telephone network. Even assuming for the sake of argument, however, that VON will be used in the near future to provide such a service or will otherwise be competitive with the interexchange services provided by ACTA's members, it does not necessarily follow that such a service would be harmful to the public interest. Quite to the contrary, such a new service would add to consumer choice. Thus, absent a compelling reason to regulate, the logical government response should be to welcome and encourage the development of the new service.^{7/} The largest savings from any such service would come in those instances in which the existing pricing for telephony is uneconomical, as is particularly the case with respect to charges for certain international calls. As James Clark of Netscape has said, "If you can bypass the tariffs and it works, then there must be something wrong with the tariffs." Communications Daily (April 8, 1996). In those cases, just as with International Callback services, the Commission's policies should be one of forbearance.^{8/}

Incumbent providers such as ACTA's members also should welcome the new competition, at least insofar as it would provide the basis for their arguing that the new competition means less need for government regulation of their own activities. Moreover, there is nothing preventing ACTA's members from themselves providing the services that they claim

^{6/} (...continued)
support issues to that rulemaking.

^{7/} The recent announcement of the Swiss Office of Communications reflects this approach. A copy of that decision, along with an informal translation of the announcement is attached as Exhibit E.

^{8/} See Order on Reconsideration, File Nos. I-T-C-93-031 and I-T-C-93-050, 10 FCC Rcd 9540 (1995).

have an unfair advantage.

II. The Communications Act and FCC Policies Support the Continued Unfettered Development of VON

B. The 1996 Telecommunications Act Does Not Require the Commission to Regulate the Internet or VON

1. The Internet is not a "Telecommunications Service" and VON software companies are not "Telecommunications Carriers"

Without explanation, ACTA contends that Congress has conferred authority on the FCC to regulate the Internet as a "Telecommunications Service" and VON software companies as "Telecommunications Carriers." No more than perfunctory examination of the issue is necessary to show that these definitions are inapplicable to the Internet and VON.

The new Telecommunications Act, Section 3, defines these terms as follows:

(48) Telecommunications.--The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(49) Telecommunications Carrier.--The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(51) Telecommunications Service.--The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

47 U.S.C. §§ 153(48), (49), and (51).

The definitions of "Telecommunications," "Telecommunications Service," and "Telecommunications Carrier" are based almost *verbatim* on the existing Commission definition

of “basic services.”^{9/} Those Commission decisions have never classified services provided over computer networks such as the Internet as “basic services.” The Telecommunications Act codifies the policy of the Commission regulating only basic services. By extension, since the Internet is not a Telecommunications Service, the software used on such networks cannot possibly require the classification of the software developed as Telecommunications Carriers.^{10/}

Moreover, VON software developers clearly do not offer “telecommunications . . . directly to the public” for purposes of the Communications Act. They do not offer any service “for a fee,” but rather merely offer software for a one-time purchase price. Accordingly, because VON software developers do not provide Telecommunications Service, by extension they cannot meet the definition of Telecommunications Carrier for purposes of the Communications Act. ACTA’s assertion that these companies should be required to apply for a Section 214 authorization or file tariffs is completely misplaced.

The ACTA proposal is also directly contrary to the theme of the Telecommunications Act, which fundamentally favors competition over regulation. Indeed, the Act’s caption is:

[a]n Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

^{9/} See Amendment to Section 64.702 of the Commission’s Rules and Regulations, Report and Order, 77 FCC 2d 384 (“Computer II”), modified on recon. 84 FCC 2d 50 (1980), further modified on recon., 88 FCC 2d 512, aff’d sub nom. *Computer & Communications Indus. Assn. v. FCC*, 693 F.2d 198 (D.C. Cir. 1982). That decision is widely regarded as having been a wise decision that permitted the robust development of the U.S. computer industry. There is no reason to change that policy now, and absolutely no reason to take the unprecedented action of going so far as to ban a particular type of computer software.

^{10/} Moreover, even if the Commission were to consider VON to be a Telecommunications Service, Section 401 of the new Act gives the FCC discretion to forbear from regulating certain common carrier services. 47 U.S.C. § 160.

2. Other specific provisions of the Act confirm that the Internet and VON should remain unregulated

The Telecommunications Act creates relevant new definitions for “Access Software Providers” and “Interactive Computer Services.” An Access Software Provider is defined as

a provider of software (including client or server software), or enabling tools that do **any one or more** of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) **transmit, receive**, display, forward, cache, search, subset, organize, reorganize, or translate **content**.

47 U.S.C. § 230(e)(4). As such, it would appear that VON software manufacturers might be considered to be Access Software Providers. An Interactive Computer Service is defined as

any information service, system, **or access software provider** that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

47 U.S.C. § 230(e)(2).

These definitions are relevant because the Telecommunications Act makes no attempt to regulate these services, but rather makes clear that the absence of regulation heretofore has been a good thing and it is U.S. policy to leave them unregulated. Specifically, Section 230(a)(4) contains a finding that “[t]he Internet and interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.” Section 230(b)(2) goes on to add that “[i]t is the policy of the United States ... to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation....” Similarly, Section 223(e)(6) clarifies that “[n]othing

in this section [concerning restrictions on obscene communications via telephone facilities or interactive computer services] shall be construed to treat interactive computer services as common carriers or telecommunications carriers." 47 U.S.C. § 223(e)(6).

VON may also be seen as resembling Customer Premises Equipment ("CPE") as defined in the new Telecommunications Act,^{11/} although CPE is defined as applying to equipment involved in Telecommunications, which makes it only imperfectly applicable to VON. In any event, VON software, like CPE, does not independently provide a user with the means to transmit or receive communications. Rather, the VON software can only function where the following five prerequisites are met: (i) each user participating in the voice communications over the Internet must have a computer meeting certain performance specifications; (ii) each such user must have compatible VON software installed on their computer; (iii) each user must install a web browser; (iv) each user must subscribe to a local exchange carrier or other Telecommunications Service provider that provides dial tone (and thereby, access to Internet access providers); and (v) each such user must subscribe to an Internet access provider.

Manufacturers of CPE are not regulated as interexchange carriers or other Telecommunications Carriers.^{12/} In Carterfone, the FCC held that any form of CPE could be attached to the telephone network provided that the interconnection does not adversely affect "the

^{11/} Specifically, Section 3 of the Telecommunications Act, 47 U.S.C. § 153(38), defines "Customer Premises Equipment" as follows:

(38) CUSTOMER PREMISES EQUIPMENT.- The term 'customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

^{12/} See Use of the Carterfone Device in Message Toll Telephone Services, 13 FCC 2d 420, recon. denied, 14 FCC 2d 571, 572 (1968) ("Carterphone").

telephone company's operations or the telephone system's utility to others." Subsequently in 1975, the Commission decided that the "customer's right to interconnect" should not be curtailed "merely because the device he seeks to interconnect can be defined to constitute a substitution for telephone system equipment."^{13/} To implement this policy, the Commission adopted Part 68 of the Commission's Rules which allows users to connect any type of CPE to the telephone network provided that either the equipment is connected through protective circuitry registered with the Commission or that the equipment is itself registered with the Commission.^{14/} In addition, the Commission's decision to not regulate CPE except in the context of its registration program pre-empts any state regulation of CPE.^{15/}

Conclusion

The Internet and VON have flourished without regulation by the Commission, providing new and innovative products and services for millions of people around the world, and generating thousands of new jobs for Americans and billions of dollars of value to the U.S. and world economies. In contrast to this clear record of benefit, ACTA submits totally unsubstantiated claims of harm, even with respect to its own members, and seeks to misapply the

^{13/} AT&T Co.'s Proposed Tariff Revisions in Tariff F.C.C. No. 263 Exempting Mebane Home Telephone Co. of North Carolina from the Obligations to Afford Customers the Option of Interconnecting Customer-Provided Equipment to Mebane's Facilities; AT&T Transmittal No. 12321, 53 FCC 2d 473, 476-477 (1975) ("Mebane").

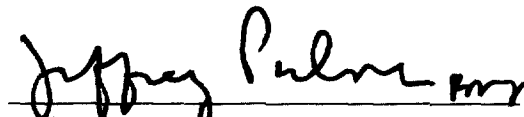
^{14/} 47 C.F.R. Part 68. Initially, the Registration Program did not apply to PBXs, key telephone systems, regular handsets, or coin telephones. In 1976, however, the Commission broadened the Part 68 rules to apply to all forms of CPE. Proposal for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS), Second Report and Order, 58 FCC 2d 736 (1976).

^{15/} *Computer and Communications v. FCC*, 693 F.2d 198, 210 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

new Telecommunications Act to establish broad new regulations, including a total ban on computer software, something the Commission has never before regulated. As such, and based on the foregoing discussion, the VON Coalition urges the Commission to reject ACTA's petition.

Respectfully submitted,

Voice on the Net Coalition



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May 8, 1996

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Exhibit A

Member Company Profiles and Products



Talk over the Internet for Free! TM

FreeTel enables you to conduct real-time full-duplex voice conversations via the Internet. You can talk to friends and relatives around the world, free of long-distance charges. *FreeTel* includes **full-duplex** (including **Sound Blaster 16**) audio support, an Electronic Phone Directory, Advanced Caller ID, Superior Audio Quality, and a keyboard (text) communicator

Best of all, you can **download** this **high-quality, fully-functional, unlimited use** product for **free**. There is no need to send any money. All you need is a 486/33 or faster computer running Windows 3.x or Windows 95 and a sound card .



Version: 1.00

Download file size is **271,906** bytes. Approximately 1 MB of hard disk space is required. During the installation process, you will be asked to agree to our **license agreement** . Use of the software is subject this agreement.

For download and installation instructions, click [here](#).

FreeTel is fast becoming the most popular way of talking over the Internet. *FreeTel's* quality and reliability are well appreciated by users. But don't take our word for it, look at what some of our users have been saying .



You can now order the FreeTel+ Registration Code for \$29.95. The Registration Code upgrades your copy of FreeTel (version 1.00) to FreeTel+, and gives you these added features:

- Unlisted Name for added privacy
- Private Groups
- Option to Disable Advertising
- Ability to fully iconify and hide *FreeTel* behind other Windows.

[[Order FreeTel+ Registration Code](#)]



So, tell me more...

With revolutionary new technology, it is now possible to use the Internet as a means of carrying real-time voice conversations. The primary advantage is that in using the Internet, you do not incur any long-distance telephone charges. Your expenses are limited to what you are already paying for your Internet connection. Another advantage is the ability to transmit data while you talk. There are disadvantages, however: The Internet introduces a delay (typically a half to one second) into your conversations, similar to the delay that was typically present in the early days of cross-Atlantic satellite telephone service. Also, there is no connectivity with the existing telephone system, so you can only speak to people who are on the Internet.

Since both the advantages and disadvantages are significant, we leave it to you to decide whether the advantages outweigh the disadvantages.